

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, Judge

DIVISION III

CA06-696

JESSICA JAMES

January 31, 2007

APPELLANT
v.
ARKANSAS DEPARTMENT OF
HEALTH & HUMAN SERVICES
APPELLEE

AN APPEAL FROM CRITTENDEN
COUNTY CIRCUIT COURT,
JUVENILE DIVISION
[No. JV 04-315]

HONORABLE RALPH WILSON JR.,
JUDGE

AFFIRMED

BRIAN S. MILLER, Judge

On March 22, 2006, the Crittenden County Circuit Court entered an order terminating appellant Jessica James's parental rights to four of her children: T.J., male, DOB 03/24/2000; J.J., male, DOB 01/30/2002; J.J., female, DOB 03/13/2003; and J.J., male, DOB 04/13/2004. James now appeals, asserting that the trial court erred in finding that there was sufficient evidence to terminate her parental rights. We find no error and affirm.

On November 23, 2004, the Arkansas Department of Health and Human Services (DHS) filed a petition for emergency custody of James's four children. The affidavit asserted

that DHS received a report of abuse of four-year-old T.J., who had been hospitalized for a severe head injury. T.J. also had severe bruising over most of his body and appeared to suffer from starvation. T.J.'s three siblings were found to have fading bruises on their faces, arms, and legs. DHS found that the children had poor hygiene and carried strong odors and that the back of the eight-month-old's head was flat with thinning hair. On December 2, 2004, the court entered an Order for Emergency Custody, finding that probable cause existed to believe that the children were dependent-neglected and that it was necessary to immediately remove the children from the care of their present custodian.

At the time T.J. was hospitalized, James was serving a three-year prison sentence for drug-related charges. James left four of her children in the legal custody of her boyfriend, Jonathon Jackson, and his mother, Lillie Faye Jackson. There was evidence that James's relationship with Jonathon was an abusive one. Jonathon was the putative father of the three younger siblings while Tony Graves, now deceased, was the putative father of T.J. Both Jonathon and Lillie Faye claimed that T.J. received his injuries from falling out of a tree. Dr. Robert Walling, however, opined that T.J. was physically abused and that virtually every surface of his body was covered with bruises, bite marks, and lacerations, and that the injuries were received at different times, as some were fresh and some obviously old. T.J.'s injuries were therefore inconsistent with accidental trauma. Dr. Walling also confirmed that T.J. had been sexually molested. Jonathon and Lillie Faye were both subsequently convicted of child abuse.

James was paroled to Lillie Faye's home on March 1, 2005, after serving approximately eleven months in prison. James asserts that she was "astounded and horrified" by what happened to her children while she was in prison but that she was living in the Jacksons' home because she had nowhere else to go. Soon thereafter, James became pregnant by Jonathan again, although she claims she did not choose to live with him.

During the various review hearings, testimony revealed that James did not comply with the case plan although she was receiving reunification services from both DHS and the Domestic Violence Program. James did not maintain steady housing and employment, she missed multiple therapy sessions, and she was often late to visits or failed to visit her children.

On January 18, 2006, DHS filed a petition to terminate James's parental rights. The petition alleged that the children had continued out of the home for twelve months and despite a meaningful effort at rehabilitation, the conditions that necessitated removal still persisted. The petition also alleged that additional factors or issues arose after the filing of the original petition that demonstrated that a return of the minors to James was contrary to their safety because James had manifested the incapacity or indifference to remedy these issues.

At the February 21, 2006, termination hearing, Liz Fitzgibbons, an adoption specialist, testified that nothing in the children's files indicated that the children would not be adopted. She admitted, however, that she had not met the children. Fitzgibbons stated that it was a

good sign that the three younger children had been placed in the same foster home. Because of the severity of his prior experiences, T.J. required more one-on-one interaction. Fitzgibbons further testified that, although it would be hard, a family willing to take all of the children could be found.

Christine JoAnn O'Malley, a school-based out-patient therapist, testified that T.J. had some hyperactivity, impulsivity, aggressive behavior, and risk-taking behavior. She also testified that T.J. had some speech delays and that his behavior had regressed and gotten more severe in the previous two months. She attributed the regression to a combination of medication issues and the missed visits with James. O'Malley opined that reunification with James was not in T.J.'s best interest due to James's inconsistent visitations and because James was unstable and not able to meet T.J.'s special needs, such as insuring that he made his weekly therapy session. She stated that although separation from his mother was difficult, stability and consistency were the most important things T.J. needed in his life.

James testified that she was currently living with her new boyfriend, Eric Coleman, in a large two-bedroom trailer. Coleman was paying all of James's expenses. James attributed her previous lack of compliance to her high-risk pregnancy and explained that she tried to do everything that was required of her but that she was "only one person." James agreed that she was not stable enough to provide for all five of her children in her home but asserted that the children would not have to wait much longer. She insisted that her relationship with Coleman was for the "long haul" although she and Coleman were not

married and he had no legal obligation to support her. She claimed that she would make sure T.J. attended all of his therapy sessions because she now had reliable transportation. She also stated that she was committed to trying to do what it took to get her children back.

James's only point on appeal is that the trial court erred in finding that there was sufficient evidence to terminate her parental rights. Under Ark. Code Ann. § 9-27-341 (Supp. 2005), the court may terminate parental rights if there is an appropriate permanency placement plan for the child and there is clear and convincing evidence that terminating parental rights is in the best interest of the child. Clear and convincing evidence is that degree of proof that produces a firm conviction in the fact finder as to the allegation sought to be established. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W. 3d 391 (2005). The procedure to terminate parental rights is a two-step process, requiring the court to find that the parent is unfit and that it is in the best interest of the child to terminate parental rights. *J.T. v. Ark. Dep't of Human Servs.*, 329 Ark. 243, 947 S.W.2d 761 (1997). The court should consider factors such as the likelihood of adoption and the potential harm to the health and safety of a child if subjected to continuing contact with the parent. Ark. Code Ann. §9-27-341(b)(3)(A) (Supp. 2005).

On appeal, an order of parental termination is reviewed de novo and will be reversed only if it is clearly erroneous. *Carroll v. Ark. Dep't of Human Servs.*, 85 Ark. App. 255, 148 S.W.3d 780 (2004). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court views the entire evidence and is left with a definite and firm

conviction that a mistake has been made. *Camarillo-Cox, supra*. In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses. *Id.* Additionally, in matters involving the welfare of young children, we give great weight to the trial judge's personal observations. *Bearden v. Ark. Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001).

The court can terminate parental rights upon a finding of the following:

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent. . . .; or

(vii)(a) That other facts or issues arose subsequent to the filing of the original petition for dependency-neglect that demonstrate that return of the juvenile to the custody of the parent is contrary to the juvenile's health, safety, or welfare and that, despite the offer of appropriate family services, the parent has manifested the incapacity or indifference to remedy the subsequent issues or factors or rehabilitate the parent's circumstances that prevent return of the juvenile to the custody of the parent.

Ark. Code Ann. § 9-27-341(b)(3)(B).

A heavy burden is placed upon the party seeking to terminate parental rights because this is an extreme remedy in derogation of the natural rights of parents. *Jones v. Ark. Dep't of Human Servs.*, 361 Ark. 164, 205 S.W.3d 778 (2005). Parental rights are not to be passed over lightly but must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. Parental rights will not be enforced to the detriment of the health and well-being of the child. *J.T., supra*. The mere existence of potential grounds for termination does not require actual termination. The

decision must be guided by a determination of whether reunification can be accomplished within a reasonable time so as to provide permanency and stability in a child's life. *Minton v. Ark. Dep't of Human Servs.*, 72 Ark. App. 290, 34 S.W.3d 776 (2000).

James relies heavily on *Kight v. Ark. Dep't of Human Servs.*, 87 Ark. App. 230, 189 S.W.3d 498 (2004) in support of her position that the trial court erroneously based its termination decision on pure speculation rather than sufficient evidence. This court, in *Kight*, reversed the trial court's termination of Kight's parental rights. *Id.* DHS had removed Kight's two children because she was addicted to cocaine and not because she was an unfit parent. By all accounts, Kight took good care of her children. *Id.* This court noted that Kight fully complied with her case plan and successfully completed drug rehabilitation services. In light of these factors, speculation as to Kight's future association with a known felon and drug abuser was not enough to warrant termination of her parental rights. *Id.* In addition, while Kight's oldest child had been out of the home for approximately one year, the younger child was only seven months old at the time of the termination hearing. *Id.*

This case can be distinguished from *Kight* in several respects. First, James's children were removed from the care of the people whom James had given legal custody. The children, especially T.J., showed signs of severe physical abuse and neglect. The children remained out of James's care for well over twelve months. Unlike Kight, James did not comply with her case plan, and we have held that partial compliance with a case plan and

court orders is not sufficient to prevent termination of parental rights. *Chase v. Ark. Dep't of Human Servs.*, 86 Ark. App. 237, 184 S.W. 3d 453 (2004).

The present case is analogous to *Trout v. Ark. Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004). In *Trout*, our supreme court affirmed the trial court's termination of a mother's parental rights where the mother could not remain stable enough for a sufficient time to indicate that reunification was possible. The court found that to give the mother more time would ignore the fact that the mother had consistently failed to follow the trial court's orders. *Id.* Similarly, in *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, —S.W.3d — (2005), the court upheld the circuit court's termination of a father's parental rights, finding that the children had been adjudicated dependent-neglected and were out of the home for seventeen months; that the father lacked stable housing and employment; that the father failed to comply with the court's order to pay child support; and that the father lacked the financial ability to provide the day to day needs of the children.

When deciding whether to terminate parental rights, in addition to looking at the substantial risk of serious harm the parent imposes and whether the parent is unfit, the trial court has a duty to look at the entire picture of how a parent has discharged her duties. *In re Adoption of K.M.C.*, 62 Ark. App. 95, 969 S.W.2d 197 (1998). James made some progress, but was often uncooperative and noncompliant with the requirements of her case plan. She had four different residences after being released on parole and was living with a new boyfriend, upon whom she totally relied for financial support. Although James obtained

several jobs, she was unable to maintain employment and blamed her high-risk pregnancy for her failure to maintain those jobs. James also blamed her pregnancy for missing several visits with her children as well as numerous counseling sessions. James's pregnancy, however, was the result of a relationship with Jonathon Jackson, with whom James rekindled an affair even after she knew that he had been accused of abusing her children.

There was ample evidence to support the trial court's findings that James was not stable enough to regain custody of her children. The court specifically found, among other things, that James was wholly dependent upon her new boyfriend; that she continued to suffer from some post-delivery complications; that she was incarcerated at the time her children entered foster care, serving a sentence for drug possession, and had earlier served a sentence for a conviction as an accomplice to burglary; that she paroled out to the home of the people who had been accused of severely abusing T.J.; that she had become pregnant by Jonathan Jackson and that the infant was also taken into DHS custody; that James had violated the terms of her parole and would be serving a minimum sixty-day sentence in the Technical Violations Center of the Arkansas Department of Correction; and that James had only been employed intermittently since her parole. James's children were in DHS custody for well over a year; they were adoptable; and testimony revealed that they desperately needed permanency in their lives. On these facts, we cannot say that the trial court committed clear error in terminating James's parental rights. Accordingly, we affirm.

Affirmed

ROBBINS and GLOVER, JJ., agree.